THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6704 OF 2007

DATED 03.04.2007

BETWEEN

M/s Sri Vani Granites

… Petitioner

AND

The Secretary, Industries & Commerce (Mines II) Department, Government of A.P., Secretariat, Hyderabad and others.

… Respondents

THE HONOURABLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioner assails Memo No.19558/M.II(1)/2006-2, dated 13.03.2007 issued by first respondent, whereunder the revision

petition filed by the petitioner under Rule 35-A of A.P.Minor Mineral Concession Rules, 1966 (the Rules, for brevity) was disposed of by first respondent reducing the penalty from five times to one time on the normal seigniorage fee.

The brief fact of the matter is that the petitioner was granted mining lease for an extent of 2.25 hectares in survey No.109 of Mamidipalem village of Anakapalli Mandal in Visakhapatnam District for road metal and building stone. The lease commenced from 28.02.2005 is valid for a period of fifteen years. The petitioner's mining area was inspected by officials of Regional Vigilance and Enforcement Department on 07.10.2006. A report was submitted to the third respondent. Based on the report, the third respondent issued a show cause notice, dated 26.10.2006 alleging that the petitioner was working beyond the lease area and that the petitioner illegally excavated 23,400 cubic meters of road metal and building stone. The petitioner was called upon to submit explanation as to why penalty should not be imposed in a sum of Rs.1,15,83,000/- along with normal seigniorage fee as per Rule 26(1) of the Rules. The petitioner submitted explanation on 02.11.2006 denying the allegations. Third respondent issued proceedings on 09.11.2006 directing the petitioner to pay the normal seigniorage fee and penalty of five times over and above normal seigniorage fee. Aggrieved by the same, the petitioner preferred revision on 15.11.2006. After considering the same, the impugned order was passed by first respondent.

Learned counsel strenuously contends that the first respondent did not apply its mind while disposing the revision petition of the petitioner. He submits that there is no iota of evidence either before the third respondent or first respondent to come to the conclusion that the petitioner quarried illegally beyond the area leased out to him or that he excavated 23,400 cubic meters illegally. He would urge that the impugned order was passed without giving any reasons and therefore is not sustainable. These contentions are refuted by learned Assistant Government Pleader for Mines and Industries.

A perusal of the order of the third respondent would show that pursuant to the inspection by Vigilance and Enforcement Department, survey and inspection was conducted by the staff of the third respondent. After fixing boundaries to the land in respect of 11 leases granted to different persons, it was found that the petitioner herein operated excess area from outside the leased area contrary to the lease deed sketch. Therefore, there cannot be any criticism about the way the third respondent arrived at the quantity of illegally quarried road metal. Secondly, the explanation submitted by the petitioner on 02.11.2006 to the show cause notice was found to be not satisfactory.

A perusal of the said explanation annexed to the writ petition would show that the petitioner was also aware of the Joint Inspection conducted by Mandal Revenue Inspector, Mandal Revenue Surveyor, the Assistant Director of Mines and Geology and Revenue Inspector (Mines). His only complaint is that when survey was conducted he was not informed about the same. In a matter of this nature, when a serious allegation is made that the mining lessee illegally quarried the minerals, it was incumbent on the petitioner to produce all the necessary details of the mineral extracted and sold. As per the Rules, no mineral can be extracted unless dead rent is paid and no mineral is removed from mining site unless seigniorage fee is paid in advance. Every mining lessee is expected to submit receipts in proof of payment of seigniorage fee and this would have been good evidence in support of the petitioners. The petitioner did not do so except making a bald denial in the explanation. Further more, after receiving the report of the Regional Vigilance and Enforcement Department, third respondent also got conducted survey before coming to the conclusion that the petitioner and others illegally quarried road metal. The first respondent also considered all these aspects and thought it fit that the penalty of five times is excessive and therefore, reduced it to one time. A perusal of the impugned memo issued by the Government would show that they properly appreciated the background before exercising their power under Rule 35-A of the Rules. The submission that it is a manifestation of non-application of mind or that it is devoid of any reasons is misconceived. This Court also holds that the revisional authority is only entitled to see that all the subordinate officials have acted within law and their orders are legal and proper. The revisional authority cannot sit in Appeal over the orders of subordinate officials.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

03.04.2007.
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